

## **NATURAL RESOURCES COMMISSION**

### **Meeting Minutes September 19, 2007**

Pursuant to the notice filed with the Town Clerk, the meeting of the Natural Resources Commission was held at 141 Keyes Road, Concord, MA at 7:00 p.m. on Wednesday, September 19, 2007. The following Commissioners were present: Chair, Alexander Easterday; Jamie Bemis, Steve Verrill, Montgomery Lovejoy and Associate Member, George Lewis. Delia Kaye, Natural Resources Administrator; and Cynthia Gray, Natural Resources Administrative Assistant, were also present.

### **THIS MEETING WAS VIDEOTAPED**

### **CONTINUANCES:**

**THE COMMERFORD REALTY TRUST** – 140 Commerford Road and 14B Commerford Road / **ANRAD** - Confirmation of the wetland resource area boundaries on the property, **DEP File #137-\*\*\***

The Applicant is seeking confirmation of the wetland resource area boundaries on the property from the Natural Resources Commission.

Rich Harrington, Stamski & McNary, and Dave Crossman of B&C Associates appeared on behalf of the Applicant.

Chuck Katuska, consultant to the Town, reviewed the wetland boundary and submitted a second report to the NRC dated September 17, 2007, which was forwarded to the Applicant's representative and to Paul McManus, EcoTec, consultant to the Annursnac Hill neighborhood group. Rich Harrington presented revised plans and a letter that outlined his response to Mr. Katuska's comments. In summary, Wetland Flag 229 was not revised in the field; RF3 and RF133 were resurveyed; and R.F. Flag #56A was added.

Al Easterday requested that representatives for the Applicant (Bruce Wheeler) obtain the Applicant's signature and submit the signature page to DNR staff. Rich Harrington stated that the Applicant sent DEP the additional \$12.50 fee on September 11, 2007. Jamie Bemis asked about drought year determination. Delia Kaye indicated that the Drought Management Task Force is still in effect and that if a Drought Advisory were issued in November, it didn't appear that the Advisory would be retroactive but documenting perennial streams as intermittent would come under careful review by DEP.

Alexander Easterday asked if there were any audience comments. There being none, this hearing was continued to October 3, 2007 at which time the hearing is expected to be closed and a permit issued.

**BENNETT – 75 Bow Street / NOI** – Construction of a garage within 100 feet of Bordering Vegetated Wetlands, Bordering Land Subject to Flooding, and the 200-foot Riverfront Area of the Mill Brook, **DEP File #137-889**

Applicant, Rick Bennett appeared. Alexander Easterday indicated that DNR staff had reviewed the revised plans and the site plan conforms with the minimum plan requirements. Delia Kaye noted that the Applicant should touch base with the Historic District Commission regarding its approval. A Special Condition to specify the number of plantings along the Mill Brook.

This hearing was continued to October 3, 2007 at which time the Commission expects to close the hearing and issue a permit.

### **PERMIT DISCUSSION**

**CONCORD WOLD, LLC – Annursnac Hill Rd & Commerford Rd / ANRAD – DEP File #137-929**

The Applicant is seeking confirmation by the Natural Resources Commission of wetland resource areas boundaries on the property

Rich Harrington of Stamski and McNary appeared on behalf of the Applicant.

Alexander Easterday noted that the Applicant closed the hearing at the last meeting. No additional or new information can be submitted. Jamie Bemis noted that in June, the Commission asked for the wetland delineation of the Benincasa parcel (2000-11). Several requests were made to the Applicant to delineate parcel 2000-11, but on August 29, 2007, the Applicant removed Parcel 2000-11 from the application. Jamie Bemis questioned the ethics of the Applicant indicating that this is a strategic move. Alexander Easterday reiterated the fact that if the Applicant adds this parcel back at a later time, they will have to delineate it. Alexander Easterday noted that the Commission has reviewed the regulations regarding the issue of perennial v. intermittent stream status. Montgomery Lovejoy indicated that he was comfortable with the Resource Areas on the balance of the project but was concerned with the Buffer Zone from adjacent parcels, even in Acton. Steve Verrill indicated that he was comfortable with everything except the Pond area. Alexander Easterday noted the WPA rivers definition that the Applicant has relied on does not include groundwater influences and streams that may actually flow year round would not, under the Regulations, be considered perennial. Montgomery Lovejoy noted that the hydrology has changed.

Alexander Easterday stated that a draft Finding would be prepared by DNR staff and a Commission meeting would be held on Monday, September 24, 2007 at 6:30 p.m. to vote and issue a permit.

### **NEW APPLICATIONS:**

**BENNOS** – 109 Hawthorne Lane / **NOI** – Construction of a deck within the 100-foot Buffer Zone to Bordering Vegetated Wetlands and Bordering Land Subject to Flooding, **DEP File 137-949.**

Heather Vaillant of BSC Group, Inc. appeared together with Applicant, George Bennos.

Heather Vaillant stated that it was the Applicant's intent to add two decks; one front deck completely in the Buffer Zone and the back deck partially in the Buffer Zone. Regrading of the berm near the rear deck would be done by hand. The grade is flat in the rear of the premises, and silt fence would be installed behind the rear deck area. Sona tubes would be used for the deck construction, which is expected to occur this fall. Materials for the project would be stored in the driveway during construction.

Steve Verrill asked about elevations. Heather Vaillant indicated a 126 to 127 elevation and 128 for flood plain.

This hearing was continued to October 3, 2007, at which time the Commission expects to close the hearing and issue a permit.

**TAYLOR** – 62 Elm Street / **NOI** – After-the-fact application to replace an existing wall and landscape within Bordering Land Subject to Flooding, the 200 feet Riverfront Area of the Sudbury River, and the 100-foot Buffer Zone to Bank and Bordering Vegetated Wetland, **DEP File #137-946.**

Rich Harrington of Stamski and McNary, Inc. appeared on behalf of the Applicant.

David Crossman of B & C Associates flagged wetland resource areas. The survey was conducted after the retaining wall was completed. The Applicant wants to remove the existing stones on the left side of the property. A 3:1 slope is being proposed instead of a replacement wall. Stepping stones are proposed on the 3:1 slope and the stockpiles will be cleaned up. The Applicant proposes to lower the top of the retaining wall closer to the house. Four to six inches of loam will be put down and a conservation seed mix broadcast in disturbed areas. The Applicant also proposes to restore the grade around existing trees.

Rich Harrington indicated that light machinery would be used to place the steps outside of the floodplain. Alexander Easterday requested that silt fence or orange fence be put up around that area to clearly demarcate the work zone for machinery. Alexander Easterday asked about regrading being proposed to the east and would it be done with machinery. Rich Harrington stated that machinery would be used outside the floodplain. Alexander Easterday indicated that the only Special Condition would be establishing the limited work area with machinery. DNR staff is still awaiting comments from Natural Heritage.

Julie Yoshida, 78 Elm Street asked about the net loss in the water holding area. Rich Harrington indicated that the proposed grades will match existing grades and that there is no expected loss in the ability of the area to retain floodwaters.

Alexander Easterday stated that the Commission would close the hearing and issue a permit later this evening.

**ESTABROOK ROAD NOMINEE TRUST – 55 Estabrook Road / AMEND ORDER DEP**

**File 137-925**– Request for an amendment to the Order of Conditions involves relocating an existing paved driveway, removing an existing utility pole and utility meter boxes, expanding a parking court, constructing and maintaining new stonewalls around the parking court, and associated landscaping located within the 100-foot Buffer Zone of Bordering Vegetated Wetland and Estimated Habitat of Rare Wildlife.

Tim Santos of Holmes & Mcgrath appeared on behalf of the Applicant. The Applicant proposes to reconfigure the driveway away from wetlands and an intermittent stream. The first 40 feet would follow the original driveway footprint, then the relocated driveway would curve away from wetlands. An existing utility pole would be removed. Approximately 420 square feet net reduction of impervious surface would occur in the 25-foot NDZ from relocating the driveway. There would be a 540 square foot net reduction in the 50-foot No New Structures Zone from the driveway relocation, parking court expansion, and stonewall, but a net increase in impervious surfaces of 2,445 square feet from these activities.

Alexander Easterday asked about the existing driveway and could the Applicant consider directing the swales away from the wetlands. Tim Santos indicated that it would have to be on the eastern side of the premises. Alexander Easterday asked if the proposed wall and eastern parking court could be moved away from wetlands. Tim Santos indicated that the parking court is proposed in a manner to accommodate emergency vehicle turnaround, which actually results in an increase in the parking court area. Delia Kaye asked if the Applicant had received any direct input from the Concord Fire Dept. Delia Kaye asked if the parking court could be moved outside of the 50-foot no new structures area, because the Commission specifically requested this during the hearing for the original project. Tim Santos indicated that he added nine (9) feet to the parking court. The existing patio is 21 feet away. Alexander Easterday requested that Tim Santos discuss alternatives with the Applicant that were in compliance with NRC policies. Tim Santos stated that there was an existing 30-inch elm tree and two dead pine trees that would be removed, but all existing walnut trees are slated to remain.

Alexander Easterday again reiterated that Tim Santos dialogue with the Applicant. This hearing was continued to October 3, 2007.

**DEE BUS SERVICE – 1135 Main Street / NOI** - Reconstructing an existing building that was demolished due to fire and associated property improvements and restoring wetlands within 200 feet of Riverfront Area of the Assabet River, Bordering Land Subject to Flooding, Bordering Vegetated Wetland and the 100-foot Buffer Zone to Bank and Bordering Vegetated Wetland, **DEP File #137-950**

Sean Hale and Jesse Johnson, David E. Ross Associates, Inc. appeared on behalf of the Applicant. The Applicant is attempting to restore the commercial building destroyed by fire in early spring. The Applicant used the approved 1992 Site Plan as a base for mitigation. The entire site is located within the Riverfront Area. Sean Hale indicated that the violation was being addressed with regard to debris being dumped containing asphalt and dirt. To mitigate for illegally removed trees, the Applicant is proposing a 1:1.5 ratio replacement. Alexander Easterday indicated that the 1992 plan being referenced in this hearing should be checked to be sure it had final approval. Alexander Easterday asked if the previous NOI application submitted by the Applicant was being withdrawn and requested that the Applicant file a formal withdrawal letter.

Delia Kaye noted that the NOI form stated that there was 21,000 square feet of Riverfront Area onsite and that 21,000 square feet of Riverfront Area was proposed to be redeveloped. This indicates that the entire site is degraded, which is not the case. Delia Kaye requested that the Applicant provide revised numbers to correctly reflect the amount of redevelopment. Jesse Johnson indicated 4,760 square feet is for the building alone. Alexander Easterday noted the roll-offs from the oil release were still on the site and since it had been over 90 days from the spring fire, they should be removed.

Montgomery Lovejoy recommended that the Applicant consider removing the pavement in the Residential Area. Delia Kaye noted that Dee Bus was under a Superior Court Injunction not to park buses in this area and that removing the pavement in the area formerly used as an illegal parking area would improve the Riverfront Area. Alexander Easterday requested that the Applicant be present at the next hearing. Jamie Bemis noted that the debris of asphalt and dirt was still on the site and the Commission had asked the Applicant to remove it prior to the fire that destroyed the building. To date, the pile was still there and the Applicant has not complied with the Commission's request to have it removed. Alexander Easterday asked if the Applicant had obtained the abutter's (the Rohans) approval to work proposed on their property. Sean Hale indicated that the 1992 plan was being used as a starting point. Jesse Johnson noted that swales would be located on the surface which would be a drainage improvement. Delia Kaye noted that the 1992 plan represented conditions that should have already been met, and by itself wouldn't constitute an improvement over existing conditions in the Riverfront Area.

Pam Gardner, 72 Cottage Street noted the repeated violations and requested clarification of the fill area. Bill McCarthy, 15 Cottage Street indicated that he had recently moved to this neighborhood and requested that the Applicant start with a clean slate and meet today's standards. Bill McCarthy asked about the size of the trees being replaced and the maintenance of those trees and did the Town have any recourse regarding the trees. Alexander Easterday noted that it was the Commission's intent to hold the Applicant accountable for improvements to the site. Jesse Johnson noted that they would also be providing 15 arbor vitae in addition to the tree restoration proposal. Delia Kaye noted that 4-6 foot maple trees are typical as they take better to replanting and that a two-year monitoring report would be required to be submitted to DNR staff. Steve Stephanopoulos, owner of Dino's Pizza, asked if the bus garage was going to be restored as there was discussion at the Zoning Board of Appeals meeting that the bus shed would not be restored. Jesse Johnson indicated that the Applicant is already acknowledging some resistance. Alexander Easterday asked that the Applicant dialogue with the Zoning Board of Appeals. A

site visit with Commission members and representatives of David E. Ross Associates, Inc. was scheduled for September 27, 2007 at 3:45 p.m. at the site.

This hearing was continued to October 3, 2007.

**TOWN OF CONCORD – Railroad Right-of-Way (Bruce Freeman Rail Trail) / ANRAD – Request for confirmation of wetland resource areas.**

Matt Varrell and Patricia Domigan of Vanasse Hangen Brustlin, Inc. (VHB) attended on behalf of the Applicant. Matt Varrell presented his findings on the wetlands along the railroad corridor.

Alexander Easterday noted that each Commission member should walk the entire rail trail with a copy of the plans in hand together with the narrative. Alexander Easterday reiterated to the audience that the purpose of this hearing was to define and delineate the wetland resource areas only. George Lewis asked if some wetlands identified on the aerial photo were the result of the railway construction. Matt Varrell responded that Wetland Resource Area #6 between the rail bed and the residential development behind it was likely a result of railway construction.

Gregor McGregor, 70 Williams Road, and an attorney at McGregor & Associates in Boston, was present in his professional capacity representing a coalition of concerned citizens. Gregor McGregor indicated that two wetland scientists, Gary R. Sanford, Ph. D and Patrick Garner, had been retained to study this project and were both present to address the Commission. stated that there were no attached documents to the ANRAD form so there is some question regarding VHB's delineation. Patrick Garner noted that both he and Gary Sanford had walked the entire site. Patrick Garner stated that VHB had done a quick delineation of the site and asked the Commission to consider hiring peer review for this project. He also requested coordinating a site visit with him, Gary Sanford and the Commission members.

Jane Coutre, 114 Stone Root Lane, noted the eroded beach at Wetland Resource Area #1 and the high use. Julie Melbin, 210 Stone Root Lane has created a website for Concord Rural Trails and believes there are many more wetlands onsite. Mike Beer, 1 South Meadow Ridge Road noted that the road flooded near the Rifle Range. Lydia Rogers, 210 Old Pickard Road, noted that she does tracking and running through the area and there is great wildlife throughout the site. Mike Beer, 1 South Meadow Ridge Road also indicated seeing lots of wildlife north of Williams Road. Gail Bucher, 14 South Meadow Ridge Road walks on the sidewalk of Old Marlborough Road and noted lots of wildlife. Dan Latham, 22 Southfield Circle, noted the potential impact and size of the project and encouraged the Commission members to walk the entire length of the rail trail. Bill Gluck, 219 Old Pickard Road noted that this was a great opportunity for the Town of Concord to go above the standards.

Alexander Easterday noted that due to the interest in this project that this hearing would be continued to October 3, 2007 and be first on the Agenda due to the large number of residents expected to attend.

## **CLOSE HEARINGS/ISSUE PERMITS**

### **THE JUSTICE RESOURCE INSTITUTE – 1749 Main Street, DEP File #137-945.**

Montgomery Lovejoy moved to close the hearing. Steve Verrill seconded. All so voted.

Montgomery Lovejoy moved to issue a standard Order of Conditions with Findings and with Special Conditions 18-41. Jamie Bemis seconded. All so voted. ]

### **PUREGROUND, INC. (Murphy)– 1315 Old Marlboro Road, DEP File #137-947**

Steve Verrill moved to close the hearing. Jamie Bemis seconded. Montgomery Lovejoy moved to accept the Findings. Jamie Bemis seconded. Montgomery Lovejoy moved to issue a standard Order of Conditions with Special Conditions 18-45. Steve Verrill seconded. All so voted.

### **TAYLOR – 62 Elm Street, DEP File #137-946**

Jamie Bemis moved to close the hearing. Steve Verrill seconded. Jamie Bemis moved to issue a standard Order of Conditions with Findings and with Special Conditions 18-42. Steve Verrill seconded. All so voted.

**BEMIS- 21 Liberty Street, DEP File #137-943** to be issued at the September 24, 2007 Commission Meeting.

**GENOVA/MAXEY – 46 Shore Drive, DEP File #137-\*\*\*** to be issued at the September 24, 2007 Commission Meeting pending an assigned DEP File #.

## **CERTIFICATES OF COMPLIANCE:**

### **TILNEY – 612 Lexington Road, DEP File # 137-883**

Jamie Bemis moved to issue the Certificate of Compliance. Steve Verrill seconded. All so voted.

### **GOODRICH TRUST (Barzilli) – 68 Great Meadow Road, DEP File # 137-936**

Steve Verrill moved to issue the Certificate of Compliance. Montgomery Lovejoy seconded. All so voted.

## **OTHER BUSINESS**

**Approve September 5, 2007 Meeting Minutes** – Steve Verrill moved to accept the September 5, 2007 Meeting Minutes as amended. Jamie Bemis seconded. All so voted.

**Old Calf Pasture violation update** – Alexander Easterday requested that NRC staff followup with Sandra Folke by letter, and said that we anticipate Sandra Folke coming before the Commission in mid-October.

**vanDer Wansem Enforcement Order update** – Plan being prepared to show existing mowed areas. Anticipate the vanDer Wansem's to come before the Commission in mid-October.

**CPC Applications** – Montgomery Lovejoy presented both DNR/NRC applications on behalf of the NRC.

**Village Overlay Committee Liaison** – tabled until October 3, 2007.

**Wetland ByLaw Meeting** – October 5, 2007 (location to be determined).

The meeting adjourned at 10:45 p.m.

Respectfully submitted,

Delia R. J. Kaye, Natural Resources Administrator

Cynthia L.Gray, Natural Resources Administrative Assistant